

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination on Summary Judgment

Petition: 53-013-14-1-5-20435-15
53-013-14-1-5-20436-15
Petitioner: Chris Parr
Respondent: Monroe County Assessor
Parcel: 53-04-10-301-018.000-013
53-04-10-301-029.000-013
Assessment Year: 2014

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. On September 14, 2015, Mr. Parr filed two Form 131 petitions with the Board. On September 15, 2015, the Board issued Notices of Defect because the Petitioner failed to attach determinations from the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”). The notices also directed Parr to file copies of the documents with which he initiated the appeal at the county level. Parr did not respond to the Notices of Defect.
2. On August 22, 2016, the Assessor filed a Motion for Summary Judgment and Designation of Evidence. Parr did not respond to this motion.

Record

3. The official record includes the following: (1) all pleadings and documents filed in the appeals; (2) all orders and notices issued by the Board.

Conclusions of Law and Analysis

4. Our procedural rules allow parties to file summary judgment motions. 52 IAC 2-6-8. Those motions are made “pursuant to the Indiana Rules of Trial Procedure.” *Id.* Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). It is not enough for a moving party to show that the party carrying the burden of proof lacks evidence on a necessary element; instead, the

moving party must affirmatively negate the opponent's claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

5. If the moving party makes the required showing, the non-moving party cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for hearing. *See Coffman*, 815 N.E.2d at 526. In deciding whether a genuine issue exists, we must construe all facts and draw reasonable inferences in favor of the non-moving party. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).
6. The Assessor contends we should dismiss Parr's Form 131 petitions because the designated evidence shows he never filed appeals at the county level for the 2014 assessment year. We agree.
7. Although taxpayers have the right to challenge an assessment, they must comply with the statutory requirements for doing so. *See Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). Where notice of an assessment is given, a taxpayer seeking review of that assessment must file a written appeal with the assessing official who gave the notice not later than 45 days from the date of the notice. I.C. § 6-1.1-15-1(c). If the parties do not resolve the appeal through a preliminary informal conference, the PTABOA must then hold a hearing and issue a determination within statutory deadlines. I.C. § 6-1.1-15-1(k), (n). A taxpayer may appeal to us from a PTABOA determination. I.C. § 6-1.1-15-3(d). If the PTABOA fails to either hold a hearing or issue a determination within the statutory deadlines, the taxpayer may appeal to us without waiting any longer for the PTABOA to act. *See* I.C. § 6-1.1-15-1(o). But there is no provision for a taxpayer to appeal an assessment directly to us without first exhausting his remedies at the local level.
8. In her affidavit, Neely Druin, an employee of the Assessor, affirmed she had personal knowledge that Form 11 Notices were issued to Parr for the 2014 tax year. She included copies of those notices, which show they were issued on June 3, 2014. She also affirmed that there is no record of Parr having filed an appeal with the Assessor for the 2014 assessment year for either parcel.
9. Thus, the Assessor made a prima facie showing that Parr did not appeal his 2014 assessments at the local level, a procedural prerequisite to appealing to us. That showing satisfies the Assessor's burden on summary judgment. To avoid entry of a final determination against him, Parr could no longer rest on the unsworn allegations in his Form 131 petitions; he instead needed to designate evidence to create a genuine issue of material fact. He failed to designate any evidence or otherwise respond to the Assessor's summary judgment motion (or the Notices of Defect).

Final Determination

The Assessor made a prima facie showing that Parr did not file appeals of his 2014 assessments at the local level. Parr failed to designate any evidence to create genuine issue of material fact or otherwise respond to the Assessor's summary judgment motion. We therefore grant the Assessor's motion and dismiss Parr's appeals.

ISSUED: December 16, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.